IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.2511 OF 2003

Shri Poorna Prajna Education & Anr. ...Petitioners.
Versus
Smt. Tripta Harishchandra Katkar & Anr. ...Respondents.

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Mr. V. H. Kantharia with Mr. S. D. Bhosale for the Petitioners.
Mr. I. A. Engineer for Respondent No.1.
Ms. S.M. Dandekar for Respondent No.2.

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CORAM : DR. D.Y. CHANDRACHUD, J.

August 7, 2006.

ORAL JUDGMENT :

The First Petitioner is a society registered under the Societies' Registration Act, 1950 and conducts a school known as the Poorna Prajna High School. The school is conducted in the Marathi Medium and is a Secondary School. The First Petitioner is stated to have been established and administered by a linguistic minority consisting of Kannad speaking persons. The First Respondent was appointed as a Headmistress on 3rd July 1995 on probation. The letter of appointment stipulated that the First Respondent would be governed by the Maharashtra Employees of

Private Schools (Conditions of Service) Regulation Rules, 1981.

2. Rule 3 of the Rules prescribes qualifications for appointment of a Head of a School. Rule 3(1)(b) which applies in the present case is o the following effect :

> "3. Qualifications and appointment of Head.- (1) A person to be appointed as the Head -
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> (b) of a secondary school including night school or a Junior College of Education shall be a graduate possessing Bachelor's degree in teaching or education of a statutory University or any other qualification recognised by Government as equivalent thereto and possessing not less than five years' total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education:
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> Provided that, in the case of a person to be appointed as the Head of a night secondary school-
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> -(i) he shall not be the one who is holding the post of the Head or Assistant Head of a day school, and
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> -(ii) the experience laid down in clause (b) of sub-rule (1) may be as a part-time teacher."

The First Respondent obtained the B.Sc. Degree in 1966 and B.Ed. in 1994. Under Rule 3(1)(b), the head of a Secondary School is required to be a graduate with a Bachelor's Degree in

teaching or education of a statutory University. Further more, the candidate has to possess not less than five years' total full time teaching experience after graduation in a secondary school or a Junior College of Education out of which two years' experience shall be after acquiring Bachelor's degree in teaching or education. The First Respondent admittedly did not fulfill the requirements. The First Respondent completed her B.Ed. in April 1994 and on the date on which she was appointed as a Headmistress, she had not attained the required experience of two years' teaching after the B.Ed. Degree. After the First Respondent was appointed as a Headmistress, an application was made by the management on 22nd October 1995 to the Deputy Director of Education for the grant of approval. Approval was, however, refused on 6th August 1997 specifically on the ground that on the date on which the First Respondent was appointed, she did not fulfill the requirement under the Rules, more particularly, of having at least two years' teaching experience after obtaining a Bachelor's Degree in teaching. The services of the First Respondent were terminated on 12th June 1998. The First Respondent thereupon moved the School Tribunal which allowed the appeal by its impugned

order dated 19th August 2003. The order of termination was quashed and set aside and the management was directed to reinstate the First Respondent with back wages.

3. Upon this petition being filed under Article 226 of the Constitution, this Court was informed that the First Respondent had been reinstated from 1st December 2003. While granting Rule, this Court, however, granted stay of back wages. The First Respondent thereupon continued to serve as a Headmistress until she attained the age of superannuation. The question in the present case is as to whether the order of the School Tribunal is consistent with the requirements contained in the Rules.

4. The School Tribunal has come to the conclusion that inasmuch as the First Petitioner is a minority institution, Section 3(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 would apply. Section 3(1) provides that the Act shall apply to all private schools in the State of Maharashtra whether or not receiving any grant-in-aid from the State

of Maharashtra. Sub-section (2) of Section 3 provides that notwithstanding anything contained in Sub-section (1), the provisions of the Act shall not apply to the recruitment of the Head of a minority school and any other persons (not exceeding three) who are employed in such school and whose names are notified by the management to the Director or, as the case may be, the Deputy Director for this purpose. The management in the present case had in fact, attempted to notify the name of the First Respondent to the Deputy Director but the Deputy Director declined to accept this on the ground that at the time of appointment, the First Respondent did not hold the requisite qualifications. The letter of the Deputy Director of Eduction dated 6th August 1997 is annexed to the proceedings. The School Tribunal is, in my view, clearly in error in holding that the provisions of Section 3(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 would operate to exempt a minority run Education Institution from observing the requirement of the qualifications prescribed for the appointment of a head of the institution. Article 30 of the Constitution empowers a religious or linguistic minority to establish and administer an

educational institution of its choice. The right under Article 30 of the Constitution is, however, subject to regulations made in the interest of preserving the quality of eduction and for ensuring proper standards of education in all educational institutions, including those run by minorities. Requirements such as the payment of adequate salaries and the holding of minimum qualifications by members of the teaching and non-teaching staff are, therefore, regulatory measures designed to ensure that educational standards in all educational institutions do not fall below the minimum. Minority institutions are equally subject to such regulatory measures that may be taken by the State consistent with Article 30 of the Constitution. The legislative history of Section 3 (2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 would show that the words "conditions of service" and "conduct and discipline" of a head of the minority school were deleted from the ambit of Section 3(2) after the judgment of the Supreme Court in **Frank Anthony Public School Employee' s Union vs. Union of India.**[1] This background was noted in the judgment of a Learned Single Judge of this Court, Mr.Justice A.P. Shah (as his Lordship then was) in **K.P. Shukla vs. The State of**

1 AIR 1987 SC 311

Maharashtra.[2] Section 3(2) of the Act provides that the Act shall not apply to the recruitment of the head of a minority school and such other persons not exceeding three, whose names are notified by the management. The expression "recruitment" would mean the process of recruitment. Section 3(2) does not authorise a departure from the minimum requirements in regard to education and experience that are uniformly laid down for the appointment of all heads of educational institutions governed by the Act. Therefore, the School Tribunal was in error in holding that Rule 3(1)(b) would have no application by virtue of the provisions of Section 3(2). The Rules being a piece of subordinate legislation must undoubtedly be subject to the provisions of the Act. However, the provisions of the Act in so far as they lay down that the Act shall not apply to the recruitment of the head of a minority School and to certain other teachers do not warrant a departure from the prescribed minimum qualifications.

5. In the Memo of Appeal that was filed by the First Respondent before the School Tribunal, there is a specific averment in para 5 that the First Respondent did not fulfill the required condition

2 1997(3) Bom. C.R. 252

of two years' experience after acquiring a Bachelor's degree, on the date of appointment. Hence, it is evident that on the date when the First Petitioner was appointed, she did not fulfill the required condition and therefore, the appointment was not a valid appointment in the eyes of law. In **Hakimsingh R. Yadav v. Vardhaman S. Jain**,[3] a Division Bench of this Court while interpreting the provision of Section 3(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, held as follows:

> "It has been held by catena of decisions that notwithstanding the protection granted to a minority institution under Article 30(2) of the Constitution, the State Government has the right to regulate the working of such minority institutions and this implies that the minority institutions must be administered in keeping with the provisions of law within the ambit of which such administration falls. When the appointments of Assistant Teachers, Supervisors, Assistant Head Master or for that matter Head Master, are being made, it is incumbent upon the minority institutions as well as to ensure that all these appointees fulfill the requirements regarding eligibility, both educational as well as experience wise."

The qualifications prescribed for appointment as a head and the experience required by Rule 3 have been held to be mandatory.

3 2001(1) Bom. C.R. 313

6. Counsel appearing on behalf of the First Respondent, however, drew the attention of the Court to sub-rule (2) of Rule 3 which is to the following effect :

> "(2) In the case of appointment to the post of Head of a secondary school including night school or a Junior College of Education if there is no person with the teaching experience mentioned in clause (b) of sub-rule (1) available on the staff of the school or if the qualified persons, though available and eligible, relinquish their claims for the post of Head and if a Management desires to appoint a person, from the teaching staff of the school who does not possess the requisite teaching experience mentioned in clause (b) of sub-rule (1), it shall apply to the Deputy Director for relaxing the requirement. The Deputy Director may, after recording reasons in writing, grant or refuse such relaxation. In such cases, the appointment shall not be made without obtaining the previous approval of the Deputy Director.
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> Note : In the case of a graduate teacher already in service in a secondary school or Junior College of Education for more than fifteen years on the 1st June 1963, the Deputy Director shall relax the requisite qualifications for appointment of such teacher as a Head."

Now, sub-rule (2) of Rule 3 applies in a situation where the management proposes to appoint an existing member of the teaching staff of the school who does not fulfill the requisite teaching

experience prescribed in clause (b) of sub-rule (1). In the event that no person with the requisite teaching experience mentioned in clause (b) of sub-rule (1) is available on the staff of the school or if qualified persons, though available and eligible, relinquish their claims for the post of Head and if a management desires to appoint a person from the member of a teaching staff from within the school, then in such a case an application has to be made to the Deputy Director for relaxing the requirement. The Deputy Director is empowered to grant or refuse the relaxation. Even in such case, the appointment shall not be made without obtaining the previous approval of the Deputy Director. Sub-rule (2) of Rule 3 does not apply to the present case because it is an admitted position that the First Respondent was not an existing member of the teaching staff within the school who was sought to be appointed by the management. Sub-rule (2) applies to a specific category of cases and is intended to provide a measure of encouragement for appointing members of the teaching staff from within the school to the position of the head of the school. It is only in their case that the power of relaxation has been conferred upon the Deputy Director of Education. That provision, however, is not

attracted to the facts of the present case.

7. There is no question of the management having implicitly condoned the deficiency on the part of the First Respondent in meeting the prescribed qualifications. The Rules have a mandatory force and character and they are designed to subserve the interests of education and in particular, of the students who receive education. The management in such cases has no power of condoning a failure on the part of the employee to meet the minimum requirements of eligibility. The conditions of eligibility have to be fulfilled on the date of the appointment. In these circumstances, it cannot be said that the Deputy Director of Education was not justified in declining to grant his approval. Counsel appearing on behalf of the First Respondent placed reliance on the judgment of a Division Bench of this Court in **Bengali Education Society vs. Presiding Officer of School Tribunal**.[4] However, the observations of the Division Bench of this Court in para 9 of the judgment would clearly show that the teacher who was appointed as a Principal of the School, duly fulfilled all the requirements of eligibility. The Division Bench has in fact, observed

4 1991 I CLR 706

that she was appointed on merits, that is, after consideration of her qualities to man the post of a Principal of the School. It was, in these circumstances, the Division Bench held that on the completion of the probationary period of two years, the provisions for deemed confirmation under Section 5(2) would be attracted. The provision would have no application where the employee was not duly qualified and did not meet the prescribed conditions of eligibility on the date of appointment.

8. For all these reasons, I am of the view that the impugned judgment and order of the School Tribunal is unsustainable and must be quashed and set aside. However, since in the meantime, the First Respondent continued to work as a Principal on and from 1st December 2003 until the date on which she attained the age of superannuation, there can be no question of any recovery of salary being made at the present point of time. Subject to the aforesaid clarification, the rule is made absolute in terms of prayer clause (a). No order as to costs.

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